THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition No.20025 of 2006

Dated: 17th November, 2006

Between:

G.Ramesh. **…..PETITIONER**

AND

The APGENCO rep by its
Managing Director, Vidyut Soudha,
Hyderabad and another.
….RESPONDENTS

THE HONOURABLE SRI JUSTICE N.V.RAMANA

W.P.No.20025 of 2006

ORDER:

This writ petition is filed seeking to call for the records in proceedings passed in Lr.No.SE/O&M/RTS/LW/F.WP 18966/1999 D.No.146-1/2K1, dated 25-5-2001, by the Superintending Engineer, Ramagundam, set aside the same and consequently direct the respondents to absorb the petitioner on regular basis.

The petitioner claims to be a contract labour. He claims that he worked as contract labour through M/s. Prabhat Engineering Works during 1994 to November, 1996, and that he was engaged as contract labour to attend repairs to coal mill works from 1-9-96 to 23-9-96. The petitioner states that as he was on the rolls of the respondents on 23.09.1996, he having regard to B.P. Ms. No. 37, dated 18.05.1997, sought absorption of his services. As his request for absorption was rejected, he filed writ petition in W.P. No. 18966 of 1999, and a learned Judge of this Court dismissed the same. Aggrieved thereby, he filed writ appeal in W.A. No. 1781 of 1999, and a Division Bench of this Court vide judgment dated 17.01.2000, allowed the same directing the petitioner to make representation before the respondents with all documents. The petitioner, accordingly, made a representation. The respondents having considered the case of the petitioner in the light of the judgment of the Division Bench of this court, through the impugned proceedings dated 25.05.2001 of the Superintending Engineer, Ramagundam, informed the petitioner that his case for absorption is

rejected. Hence, he filed the present writ petition.

The learned counsel for the petitioner submitted that the petitioner has ample material to show that he was on the rolls of the contractor as on 23.09.1996, and as such, is entitled to absorption of his services.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

The petitioner earlier filed writ petition in W.P. No. 18966 of 1999 seeking a direction to the respondents to regularize his services on the ground that he was on the rolls of the contractor as on 19.12.1997, the day on which the contract system was abolished. A learned Judge of this court, vide orders dated 08.11.1999, taking into consideration the material available before him, dismissed the same holding:

> "In the averments made in the affidavit filed in support of the writ petition, the petitioners do not state that they were on rolls of employment on 23-9-96. On the other hand, it is stated that the petitioners were on the rolls of employment as on 19-12-97 when the contract labour system was abolished, and therefore they are betterly placed than the contract labour who were on rolls of employment on 23-9-96. In view of this admitted position that the petitioners were not on rolls of employment on 23-9-1996, no relief could be granted to the petitioners. The impugned order passed by the respondent corporation rejecting the case of the petitioners for absorption into service in my considered opinion does not suffer from any infirmity whatsoever warranting any interference."

Aggrieved by the above said order, the petitioner filed writ appeal in W.A. No. 1781 of 1999, and a Division Bench of this Court, vide judgment dated 17.01.2000, disposed of the same with the following directions:

> "The learned counsel for the respondents stated that the case of the appellants were not considered since the material papers showing that they were on the rolls of employment as on 23-9-96 were not placed either before the learned single judge or before the authorities. The counsel for the respondents further stated that if the appellants made an appropriate representation before the respondents-corporation along with the material papers showing that they were on the rolls of employment as on 23-9-96, the same would

be considered by the respondent corporation.

> The writ appeal is accordingly disposed of with a direction that the appellants are at liberty to make a representation with all the material facts if respondents shall consider and dispose of the same on merits without taking into consideration any observations made by the learned single judge within a reasonable period of 30 days from the date of receipt of such representation."

The petitioner complaining that the respondents did not comply withy the above order, filed contempt case in C.C. No. 942 of 2005, and the Division Bench of this Court vide orders dated 31.08.2005, closed the same with the observations as follows:

> "This court by an order dated 17-1-2000 given liberty to the appellants to make a representation. Accordingly, the petitioner submitted his representation on 3.3.2000 for absorption into the employment of the respondent-Board in terms of B.P.Ms.No.37, dated 18.5.1997. But the respondents rejected the case of the petitioner for absorption vide proceedings dated 25.5.2001 stating that the petitioner was not covered within 33 abolished categories as per G.O.Ms.No.41, dated 23.9.1996. In view of the above, the order passed by this Court is very much complied with and at this stage we cannot go into the merits or otherwise of the order. Hence, we do not find any contempt and accordingly, the Contempt Case is closed. If the petitioner so chooses, he can challenge the order by filing a fresh writ petition."

On the basis of the observations made by the Division Bench in the contempt case, that the petitioner if so chooses, can challenge the order by filing a fresh writ petition, the petitioner filed the present writ petition assailing the order of rejection.

The impugned order, which was passed in compliance of the orders of the Division Bench of this court in W.A. No. 1781 of 1999, reads as follows:

> You have not worked on 23.9.96 as per the details furnished in the bonafide certificate by the field officers and also as per the reports of the field officers and hence your are not meeting conditions prescribed in B.P. Ms. No. 37, dated 18.5.97, and thus you are not entitled for absorption.

Since as per the reports and details furnished in the bonafide

certificate by the field officers the petitioner is said to have not worked on 23.09.1996, no exception can be taken to the impugned order passed by the Superintending Engineer, and more so when he is said to have not met the conditions prescribed in B.P. Ms. No. 37, dated 18.5.1997. Be that as it may, the questions, namely whether the petitioner was on rolls as on 23.09.1996 and whether he is entitled to absorption of his services in terms of B.P. Ms. No. 37, dated 18.5.1997, being disputed questions of fact, having regard to the judgment of the apex Court in **Steel Authority of India Limited vs. National Water Front Workers**[1], cannot be conveniently gone into by the High Courts in exercise of their jurisdiction under Article 226 of the Constitution, and the remedy of the petitioners, if any, is to approach the labour authorities under the Industrial Disputes Act, 1947..

Accordingly, the writ petition is dismissed. However, if the petitioner so chooses, he is at liberty to approach the labour authorities under the Industrial Disputes Act, 1947. No costs.

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(N.V. RAMANA, J.)

Date:17-11-2006

grk

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[1] 2001 (6) ALD 1